

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Sound Communications, LLC)	File No.: EB-FIELDNER-13-00009899
Owner of Antenna Structure Number 1053420)	NAL/Acct. No.: 201432400005
Licensee of AM Station WENY)	FRN: 0019815109
Southport, New York)	Facility ID No.: 71510

MEMORANDUM OPINION AND ORDER

Adopted: February 5, 2016

Released: February 8, 2016

By the Deputy Chief, Enforcement Bureau:

1. We deny the Petition for Reconsideration filed by Sound Communications, LLC (Sound Communications) seeking reconsideration of a Forfeiture Order issued by the Enforcement Bureau. On June 2, 2014, the Enforcement Bureau's Philadelphia Office issued a Notice of Apparent Liability for Forfeiture Order (NAL) proposing a \$7,000 forfeiture against Sound Communications for apparently willfully and repeatedly violating Section 73.49 of the Commission's rules (Rules) by failing to enclose its antenna structure for AM Station WENY within an effective locked fence or other enclosure.¹ The Enforcement Bureau subsequently issued a Forfeiture Order imposing a \$7,000 penalty against Sound Communications.²

2. Petitions for reconsideration are granted only in limited circumstances. Reconsideration is appropriate only when the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.³ A petition for reconsideration that only reiterates facts and arguments previously considered and rejected will be denied.⁴ Sound Communication's Petition fails to present such information warranting reconsideration.

3. Were we to reach the merits of Sound Communication's arguments, we also would find no basis for reconsideration. Sound Communications argues that a forfeiture reduction is warranted because there is no evidence of a "willful or repeated" violation of the Communications Act or Rules.⁵

¹ *Sound Communications, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5840 (Enf. Bur. 2014) (NAL); 47 C.F.R. § 73.49.

² *Sound Communications, LLC*, Forfeiture Order, 30 FCC Rcd 6252 (Enf. Bur. 2015) (Forfeiture Order).

³ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)); see also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012)(providing standard of review for petitions for reconsideration).

⁴ 47 C.F.R. § 1.106(a)(3) (petitions for reconsideration may be dismissed or denied where they "[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding"). See, e.g., *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964) (reconsideration "will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken"), *aff'd Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *Ely Radio*, 27 FCC Rcd at 7610, para. 6; *EZ Sacramento*, 15 FCC Rcd at 18257, para. 2.

⁵ Petition at 2.

As explained in the *NAL* and Forfeiture Order, the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law renders a violation willful regardless of whether the party intended to violate the law.⁶ In its Petition, Sound Communications does not deny that it deliberately left its fencing gate unlocked. Rather it argues that its conduct was not willful but merely an “inadvertent error” that was immediately rectified upon notification of the issue.⁷ We disagree. The Bureau addressed this in the Forfeiture Order noting that “[i]nadvertent mistakes are not mitigating circumstances that can serve to justify a forfeiture reduction.”⁸ As a result, we find that Sound Communications willfully violated the Rules. In its Petition, Sound Communications also concedes that the violation continued over several days.⁹ As a result, even if we did not find Sound Communications’ violation willful, the Bureau correctly determined that the violation was repeated.¹⁰

4. Sound Communications’ Petition fails to present any information or argument warranting reconsideration of the Forfeiture Order. The Petition does not challenge the Bureau’s finding that Sound Communications’ antenna structure was not properly enclosed, nor does it dispute that the gate remained unlocked for several days. Instead, Sound Communications’ argues that the “Commission’s conclusion regarding what constitutes a ‘willful’ or ‘repeated’ violation has not been corroborated by any court.”¹¹ This argument was fully considered and rejected in the Forfeiture Order.¹² Accordingly, because Sound Communications failed to provide any new information, or to raise any new arguments not previously considered and rejected by the Bureau, we deny the Petition pursuant to section 405 of the Act and Section 1.106 of the Commission’s rules.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹³ and Section 1.106 of the Rules,¹⁴ the Petition for Reconsideration filed by Sound Communications, LLC is hereby **DENIED**.

6. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80 of the Rules, Sound Communications, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 73.49 of the Rules.¹⁵

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Memorandum Opinion and Order.¹⁶ If the

⁶ See *NAL*, 29 FCC Rcd 5842, para. 7; see also Forfeiture Order 30 FCC Rcd 6254, para 6 (citing 47 U.S.C. § 312(f)(1)).

⁷ Petition at 3.

⁸ Forfeiture Order 30 FCC Rcd 6254, para 6. See also *W. Slope Communications, LLC*, Forfeiture Order, 29 FCC Rcd 10470, 10471, para. 6 (Enf. Bur. 2014). See, e.g., *Steckline Communications, Inc.*, Forfeiture Order, 29 FCC Rcd 1082, 1084, para. 5 (Enf. Bur. 2014) (“[I]nadvertent mistakes neither excuse a rule violation nor mitigate a forfeiture liability.”); *Emigrant Storage LLC*, Forfeiture Order, 27 FCC Rcd 8917, 8919, para. 6 (Enf. Bur. 2012) (“[I]t is well established that administrative oversight or inadvertence is not a mitigating factor.”).

⁹ Petition at 2.

¹⁰ Forfeiture Order 30 FCC Rcd 6254, para 6 (citing 47 U.S.C. § 312(f)(1)).

¹¹ Petition at 3-4.

¹² Forfeiture Order 30 FCC Rcd 6254, para 4 (wherein the Bureau noted that it fully considered Sound Communications’ *NAL Response* and concluded that none of its arguments were persuasive).

¹³ 47 U.S.C. § 405.

¹⁴ 47 C.F.R. § 1.106.

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.49.

¹⁶ 47 C.F.R. § 1.80.

forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁷

8. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Sound Communications, LLC, shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

9. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

10. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to Sound Communications, LLC at 15 Woodland Way, Painted Post, New York 14870 and to Mark B. Denbo, Esq., Counsel for Sound Communications, LLC, at Smithwick & Belenduik, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

William Davenport
Deputy Chief
Enforcement Bureau

¹⁷ 47 U.S.C. § 504(a).

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 47 C.F.R. § 1.1914.